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April 14, 1997

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WRITTEN EX PARTE PRESENTATION

William F. Caton
Acting Secretary
1919 M Street, N.W.
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Federal Communications Commission
Office of Secretary

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RE: CC Docket No. 96-128, Ameritech CEI Plan for Pay Telephone Services.

Dear Mr. Caton:

The Illinois Public Telecommunications Association ("IPTA") wishes to respond to the recent *ex parte* filings by Ameritech in support of its CEI Plan filed under the Commission's orders in CC Docket No. 96-128. Ameritech opines in its March 19, 1997 and April 10, 1997 letters to the Commission that it has complied with all the requirements of the FCC's orders, including the April 4, 1997 Bureau Order.¹ The Commission should not be persuaded by Ameritech's rhetoric. Ameritech does not 1) provide cost-based (under the new services test of the Commission's price cap rules, 47 C.F.R. §61.49(g)(2)) network services², and Ameritech has still not committed to providing from each of its exchanges a coin line service that allows payphone providers to charge end users rates selected by the payphone provider. These two defects are fundamental to Section 276 of the Communications Act of 1934, 47 U.S.C. §276, and the Commission's orders in this proceeding. Because Ameritech's CEI Plan does not comply with Section 276 of the Act in these two major respects, the IPTA continues to urge the Commission to reject Ameritech's plan until Ameritech has come into complete compliance with federal law.

¹In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-678 (released April 4, 1997.) ("Bureau Order.")

²The IPTA considers the following to be examples of network services that must be cost based under the New Services Test: COPT and Coin line monthly network access services (including the nondiscriminatory coin line service which Ameritech refers to as Profitmaster), intraLATA usage, touchtone, call screening, and answer supervision.

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The Commission cannot approve a Computer III CEI Plan (which is required by Section 276 of the Act and the Commission's Orders), with network access services that do not comply with the Price Cap regulations and the New Services Test. (47 C.F.R. § 61.49(g)(2)). The requirement that Ameritech's network access services comply with the New Services Test has been clear since the Commission's original Payphone Order in September, 1996. The Commission should not be persuaded by Ameritech's plea that complying with federal regulations is overly burdensome, and that pricing for network access services is an issue that can somehow be segregated from the approval process for a CEI Plan; compliance with the New Services Test is an explicit and inherent requirement in every implementation proceeding under federal law. The Commission must reject Ameritech's CEI Plan because Ameritech has not complied with the New Services Test by 1) pricing network access services to payphone providers on the cost-based requirements of federal regulations; and 2) providing cost studies and work papers evidencing that these network access services do comply with federal law.

The fundamental purpose of Section 276 of the Act, and the Commission's orders requiring Ameritech to file a CEI Plan under the Computer III requirements is to provide evidence that Ameritech's network access services provided to payphone providers are not discriminatory, that Ameritech's network access services are not priced at a rate that will impose a price squeeze on payphone providers, and that revenue from regulated services is not being used to subsidize Ameritech's payphone operations. (*California v. Federal Communications Commission*, 4 F.3d 1505, 1511 (9th Cir. 1993) ("California II"); *See also, United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C.Cir. 1993), cert. denied, 510 U.S. 984, 114 S.Ct. 487, 126 L.Ed.2d 438 (1993), in which Judge Green concluded that price cap regulation "reduces any BOC's ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling.")

There have been three primary and fundamental defects with Ameritech's proposed CEI Plan:

1. The coin line service proposed by Ameritech was discriminatory in many, many respects, including the fact that it required competitive payphone providers to price their payphone services to end users at rates selected by Ameritech's payphone division (47 U.S.C. 276(a)(2)); and,
2. Ameritech failed to provide evidence that its network services provided to payphone providers (both Ameritech and non-Ameritech payphone providers who operate in Ameritech's territories) are priced in compliance with the New Services

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Test required under the Price Cap Rules adopted by the Federal Communications Commission (47 U.S.C. § 276(b)(1)(C); 47 C.F.R. §61.49(g)(2)).

3. Ameritech provided the FCC with no evidence that its payphone operations, which have become unregulated under the FCC's orders in CC Docket No. 96-128, are not being subsidized with revenue from regulated exchange service operations (*i.e.* revenue from residential customers) (47 U.S.C. 276(a)(1));

Section 276 and federal regulations require that Ameritech not discriminate against its competitors, that Ameritech price its services at cost-based rates, and that Ameritech not subsidize its payphone operations. The three defects in Ameritech's CEI Plan were not merely procedural or technical defects in a compliance paper filing, but go to the central core of whether Ameritech complies with the statutory requirements of Section 276 of the Communications Act of 1934.

Since its original filing, Ameritech has modified somewhat its proposed CEI Plan, and has come significantly closer to having a proper CEI Plan in place for its Illinois operations.³ In its April 10, 1997 letter, Ameritech indicates that it will tariff its nondiscriminatory coin line service (Profitmaster) at the FCC within 45 days. The IPTA commends Ameritech for being perhaps the only LEC to formally commit to providing nondiscriminatory coin line services.

³This *ex parte* filing relates exclusively to Ameritech's Illinois network and payphone services. Because the Illinois Commerce Commission has restructured Ameritech's payphone operations (A copy of the Illinois Commerce Commission's June 9, 1995 Order in *Independent Coin Payphone Association, et al. v. Illinois Bell Telephone Company*, is attached as Appendix A to the initial comments filed by the Great Lakes Public Communications Regional Coalition To Ameritech's Alleged Plan to Provide Comparably Efficient Interconnection To Providers of Pay Telephone Services), there is an evidentiary basis for the Commission to conclude that Ameritech is not subsidizing its payphone operations with revenue from regulated services (*i.e.* residential customers.) However, Ameritech has provided no evidence to suggest that Ameritech is no longer subsidizing its payphone operations in other states, and Ameritech is required to provide such evidence to the FCC in order to comply with Section 276(a) of the Act. Therefore, there are additional reasons why the Commission should reject Ameritech's CEI Plan, but these reasons relate to Ameritech's payphone operations in other states.

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However, the Commission should note that Ameritech did not formally commit to providing a nondiscriminatory cost-based (Profitmaster) coin line service from each of its exchanges. Ameritech's nondiscriminatory coin line service must be made available not only from each central office in Illinois, but also from where ever Ameritech provides regulated local exchange services. If this service is made available from all exchanges in Illinois, and all of Ameritech's network access charges are priced in compliance with the New Services Test, then Ameritech will have satisfied one of the fundamental defects in its original CEI Plan.

To satisfy the remaining defect its it CEI Plan (for Illinois), Ameritech must still provide cost studies as evidence that its network access services comply with the Price Cap regulations. Under the Commission's price cap rules, Ameritech is required to tariff new services with the Commission, and include these new services as part of Ameritech's annual price cap filings. (47 C.F.R. §61.42) Ameritech is also required to file cost studies and work papers proving to the Commission that Ameritech's network services are priced in compliance with the new services test. (47 C.F.R. §61.49). Because Ameritech has not provided the Commission with cost studies to prove that its network services (i.e. monthly line charges for COPT and Coin line services, usage services) are cost-based, Ameritech has not complied with the Commission's Price Cap regulations

Once Ameritech begins offering its Profitmaster coin line service at cost-based rates, and prices its network access services under the new services test, Ameritech will have complied with the FCC's orders. The Commission, however, must reject Ameritech's CEI Plan until these two elements are implemented, not just theoretical paper arguments made by Ameritech. The IPTA requests that the Commission do the following with respect to Ameritech's CEI Plan:

1. Accept Ameritech's offer to provide Profitmaster coin line service as a nondiscriminatory coin line service that is made available to all payphone providers;
2. Accept the Great Lake's Coalition's evidence that Ameritech is not subsidizing its payphone operations with revenue from regulated exchange operations (i.e. business and residential customers) only in the state of Illinois, but not in other states;
3. Reject Ameritech's argument that it has filed a CEI plan that complies with Section 276 of the Communications Act of 1934 (47 U.S.C. §276, hereinafter

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"Section 276") and the FCC's orders adopted pursuant to Section 276 until Ameritech can provide evidence produced of record in this proceeding that:

- a. Ameritech's payphone operations in states other than Illinois (Indiana, Ohio, Michigan, and Wisconsin) are not being subsidized (as required by Section 276(a)(1); and
- b. Ameritech offers central office services (monthly line charges for both coin line and COPT service, usage services, call screening, call blocking, answer supervision, restricted coin service) in compliance with the New Services Test adopted under the Commission's Price Cap Rules as required under the Commission's orders in CC Docket No. 96-128.

Until these elements are in place, Ameritech has not filed a CEI Plan that complies with federal law. The IPTA requests that the Commission reject Ameritech's CEI Plan as filed, and continue the investigation until Ameritech has come into complete compliance.

Sincerely,



Henry T. Kelly

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